



STATE BOARD OF EQUALIZATION

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December 18, 2012

Dear Interested Party:

Enclosed is the Initial Discussion Paper on proposed Regulation 1566.1, *Auto Auctioneers and Dismantlers*. Discussion regarding proposed Regulation 1566.1 is scheduled for the Board's **March 12, 2013 Business Taxes Committee** meeting.

However, before the issue is presented at the Business Taxes Committee meeting, staff would like to provide interested parties an opportunity to discuss the issue and present any suggested changes or comments. Accordingly, a meeting is scheduled in **Room 122 at 10:00 a.m. on January 8, 2013**, at the Board of Equalization, 450 N Street, Sacramento, California.

If you are unable to attend the meeting but would like to provide input for discussion, please send your submission to the above address or send a fax to 1-916-322-4530 before January 4, 2013. In addition, please feel free to publish this letter and paper on your website or otherwise distribute it to your associates, members, or other persons that may be interested in attending the meeting or presenting their comments.

If you plan to attend the meeting on January 8, 2013 or would like to participate via teleconference, please let staff know by contacting Mr. Robert Wilke at 1-916-445-2137 or [Robert.Wilke@boe.ca.gov](mailto:Robert.Wilke@boe.ca.gov) prior to January 4, 2013. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Whether or not you are able to attend the above interested parties' meeting, please keep in mind that the due date for interested parties to provide written responses to staff's analysis is January 18, 2013. Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

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Thank you for your consideration. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Kirsten Stark, Supervisor, Business Taxes Committee and Training Section, at 1-916-324-0849.

Sincerely,



Susanne Buehler, Chief  
Tax Policy Division  
Sales and Use Tax Department

SB:rsw

Enclosure

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District  
Honorable Michelle Steel, Vice Chair, Third District  
Honorable Betty T. Yee, Member, First District (MIC 71)  
Senator George Runner (Ret.), Member, Second District (MIC 78)  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. Robert Thomas, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Third District  
Mr. Tim Treichelt, Board Member's Office, Third District  
Mr. Alan LoFaso, Board Member's Office, First District  
Ms. Mengjun He, Board Member's Office, First District  
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Mr. Lee Williams, Board Member's Office, Second District  
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Ms. Cynthia Bridges (MIC 73)  
Mr. Randy Ferris (MIC 83)  
Mr. Jeffrey L. McGuire (MIC 43)  
Mr. Jeff Vest (MIC 85)  
Mr. David Levine (MIC 85)  
Mr. Robert Tucker (MIC 82)  
Ms. Christine Bisauta (MIC 82)  
Mr. Bradley Heller (MIC 82)  
Mr. Lawrence Mendel (MIC 82)  
Mr. Cary Huxsoll (MIC 82)  
Mr. Todd Gilman (MIC 70)  
Ms. Lauren Simpson (MIC 70)  
Mr. Bill Benson (MIC 67)  
Mr. Joe Fitz (MIC 67)  
Mr. Stephen Rudd (MIC 46)  
Mr. Kevin Hanks (MIC 47)  
Ms. Kirsten Stark (MIC 50)

Mr. Robert Wilke (MIC 50)  
Ms. Lynn Whitaker (MIC 50)

# INITIAL DISCUSSION PAPER

## Proposed Regulation 1566.1, *Auto Auctioneers and Dismantlers*

### Issue

Whether the Board should adopt Sales and Use Tax Regulation (Regulation) 1566.1, *Auto Auctioneers and Dismantlers*, to implement, interpret, and make specific Revenue and Taxation Code section 6092.5, which provides that a person making a sale at auction or a dismantler licensed under the Vehicle Code (VC) is presumed to be making a retail sale to a purchaser of a vehicle, mobilehome, or commercial coach.

### Background

Effective September 29, 2012, Revenue and Taxation Code (RTC) section 6092.5, as added by Assembly Bill No. 2618 (AB 2618) (Stats. 2012, ch. 756), provides that every “qualified person” making any sale of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code (HSC); or of a vehicle required to be registered under the VC or subject to identification under Division 16.5 (commencing with Section 38000) of the VC; or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the VC; or of any salvage certificate vehicle as defined in Section 11515 of the VC, is presumed to be making a retail sale and not a sale for resale. RTC section 6092.5 specifies that a “qualified person” means a person making a sale at auction or a dismantler licensed under the VC.

A “qualified person” may rebut the presumption that a sale was made at retail by accepting a resale certificate from any one of the following: a person that certifies it is licensed, registered, regulated, or certificated under the HSC or the VC as a dealer or dismantler; a person that certifies it is licensed, registered, regulated, or certificated under the Business and Professions Code (BPC) as an automotive repair dealer, or is qualified as a scrap metal processor as described in the VC; or a person that certifies it is licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, automotive repairer, or scrap metal processor. A “qualified person” is not allowed to accept a resale certificate from any other person for purposes of rebutting the presumption that the sale was made at retail.

RTC section 6092.5 also provides that the resale certificate should include the applicable license or registration number of the dealer, dismantler, or automotive repair dealer, in addition to the elements prescribed by RTC section 6093 and 6243 with respect to the form of certificate. RTC section 6092.5 further provides that the resale certificate issued by the purchaser must be in substantially the same form as the Board may prescribe. If a “qualified person” does not timely obtain a resale certificate, they may use alternative methods as prescribed by the Board to rebut the presumption that the sale was made at retail.

### Discussion

#### General

The sales tax is generally imposed upon the retailer, including persons making sales at auction, for the privilege of selling tangible personal property at retail in this state. If a person is purchasing property for the purpose of reselling the property prior to any use (other than

## INITIAL DISCUSSION PAPER

### **Proposed Regulation 1566.1, Auto Auctioneers and Dismantlers**

retention, demonstration, or display) of the property, the seller may accept a resale certificate from the purchaser. Timely acceptance of a resale certificate in good faith relieves the seller of the liability for the sales tax. In the absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains essential elements and otherwise appears to be valid on its face. If the purchaser insists that he or she is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business. As discussed herein, more specific rules apply regarding from whom an auto auctioneer or dismantler may accept resale certificates. The purchaser is then generally liable for the sales tax on the subsequent retail sale of the property (unless this retail sale is exempt for some other reason). If a purchaser who issues a resale certificate in good faith thereafter makes any taxable use of the property, he or she becomes liable for the use tax on the cost of the property.

#### Mobilehomes, Commercial Coaches, and Vehicles

In general, every person making a retail sale of a mobilehome, commercial coach, or vehicle is a retailer. However, when the retailer is not licensed or certificated pursuant to the HSC or VC as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, the use tax rather than the sales tax applies to the sale. The purchaser of the mobilehome, commercial coach, or vehicle is required to pay the use tax to the Department of Housing and Community Development or to the Department of Motor Vehicles at the time of making application for registration or identification.

#### Staff's Proposed Regulation 1566.1 (Exhibit 1)

Staff's proposed regulation identifies those sellers affected by the presumption that a sale was at retail by defining "qualified person" and specifies the type of property to which the presumption applies by defining the term "vehicle." Staff's proposed regulation also specifies that a "qualified person" may not accept a resale certificate from any person other than those specified in the regulation (licensed dealers, dismantlers, automotive repair dealers, or qualified scrap metal processors).

In addition, staff's proposed regulation prescribes the form of the resale certificate that a "qualified person" may accept and provides that the resale certificate should be in substantially the same form as Appendix A of the proposed regulation. The proposed resale certificate is similar to the BOE-230, *General Resale Certificate*; however, it also requires a purchaser to check the applicable statement to certify that it is:

- licensed, registered, regulated, or certificated under the HSC or VC as a dealer or dismantler, or
- licensed, registered, regulated, or certificated under the BPC as an automotive repair dealer, or
- qualified as a scrap metal processor, or
- licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, auto repairer, or scrap metal processor.

## **INITIAL DISCUSSION PAPER**

### **Proposed Regulation 1566.1, *Auto Auctioneers and Dismantlers***

Dealers, dismantlers, and automotive repair dealers are also required to provide their license or registration number. Persons authorized by another jurisdiction are required to provide the jurisdiction where authorized and their applicable license or registration number. The proposed resale certificate also requires a purchaser to include a description of the property to be purchased under the certificate.

In addition to providing a specific resale certificate, proposed Regulation 1566.1 clarifies when a resale certificate is considered timely and taken in good faith. The proposed regulation also provides that the seller may be relieved of the liability of tax by using alternate verifiable methods, and explains the purchaser's liability if the "vehicle" is used in a taxable manner by the purchaser prior to sale or if the purchaser knows at the time of their purchase that it would not resell the "vehicle" in the regular course of business.

#### **Summary**

A person making a sale at auction or a licensed dismantler is presumed to have made a retail sale to a purchaser of a "vehicle," as defined. The seller may rebut the presumption by timely accepting a resale certificate in good faith from a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. Staff believes proposed Regulation 1566.1, *Auto Auctioneers and Dismantlers*, provides guidance to auto auctioneers, licensed dismantlers, and their customers with respect to sales and purchases of vehicles. Staff also believes the form of the resale certificate prescribed by the proposed regulation contains the essential elements as required by RTC section 6092.5. Staff welcomes any comments, suggestions, and input from interested parties on this issue and invites interested parties to participate in a meeting scheduled for January 8, 2013, to discuss this topic. Currently, there is only one interested parties meeting scheduled before the issue will be discussed at the March 12, 2013, meeting of the Business Taxes Committee.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of December 17, 2012

**Regulation 1566.1 Auto Auctioneers and Dismantlers**

Reference: Sections 6011, 6012, 6015, 6092, 6092.5, 6093, 6094.5, 6242, and 6243 Revenue and Taxation Code.

- (a) Definitions.
  - (1) Qualified Person. A “qualified person” means a person making a sale at auction or a dismantler licensed under the Vehicle Code.
  - (2) Vehicle. “Vehicle” includes:
    - (A) A mobilehome or commercial coach required to be registered annually under the Health and Safety Code.
    - (B) A vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code.
    - (C) A vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.
    - (D) Any salvage certificate vehicle as defined in Section 11515 of the Vehicle Code.
- (b) Presumption.
  - (1) It is presumed that a sale of a “vehicle” by a “qualified person” is a sale at retail and not a sale for resale.
  - (2) Rebutting the Presumption. To rebut the presumption, a “qualified person” may timely take in good faith a resale certificate in the form described in subdivision (c) from any of the following:
    - (A) A person that certifies it is licensed, registered, regulated, or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler.
    - (B) A person that certifies it is licensed, registered, regulated, or certificated under the Business and Professional Code as an automobile repair dealer, or is qualified as a scrap metal dealer as described in the Vehicle Code.
    - (C) A person that certifies it is licensed, registered, regulated, certificated, or otherwise authorized by another state, country, or jurisdiction to do business as a dealer, dismantler, auto repairer, or scrap metal processor.
  - (3) A “qualified person” shall not accept a resale certificate from any person except as provided in subdivision (b)(2).
  - (4) A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller’s normal billing and payment cycle, or any time prior to delivery of the property to the purchaser.
  - (5) In absence of evidence to the contrary, a seller will be presumed to have taken the resale certificate in good faith if the certificate contains all the essential elements described in (c)(1) and otherwise appears valid on its face.

- (c) Form of Certificate.
- (1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:
    - (A) The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.
    - (B) The name and address of the purchaser.
    - (C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser makes no sales in this State, the purchaser must include on the certificate the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.
    - (D) A statement that the property described in the document is purchased for resale in the regular course of business. The document must contain the phrase "for resale". The use of phrases such as "non-taxable", "exempt", or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.
    - (E) A statement that the purchaser is licensed, registered, regulated, or certificated as a dealer, dismantler, auto repair dealer, or is qualified as a scrap metal processor. The purchaser should include the license or registration number, as applicable. If the purchaser is regulated by another state, the certification should identify the state.
    - (F) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)
  - (2) The certificate should be substantially in the form shown in Appendix A of this regulation.
- (d) Other Evidence to Rebut Presumption that the Sale is at Retail. If the seller does not timely obtain a resale certificate in the form described in subdivision (c), the seller will be relieved of liability for the tax only where the seller shows through some alternative verifiable method that the property:
- (1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or
  - (2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or
  - (3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or
  - (4) Was consumed by the purchaser and tax was reported to the Department of Housing and Community Development, acting for and on behalf of the Board, at the time of making application for registration, or



- (5) Was consumed by the purchaser and tax was reported to the Department of Motor Vehicles, acting for and on behalf of the Board, at the time of making application for registration or identification, or
  - (6) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.
- (e) **Purchaser's Liability for Tax.** A purchaser who issues a resale certificate containing the essential elements as described in subdivision (c) and that otherwise appears valid on its face, and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

APPENDIX A

California Resale Certificate - Sales by Auto Auctioneers and Auto Dismantlers

Sales of vehicles, motor homes, and commercial coaches at auction or by auto dismantlers are presumed to be retail sales and not sales for resale unless the seller timely takes a valid resale certificate from a person who is licensed, registered, regulated, or certificated as a dealer, dismantler, or auto repair dealer; or a qualified scrap metal processor. The resale certificate must include the purchaser's license or registration number.

I HEREBY CERTIFY:

1. ☐ I hold valid California seller's permit number: \_\_\_\_\_  
☐ I am not required to hold a California seller's permit because I do not make any sales in the State.
2. I certify (check statement that applies and provide your applicable license or registration number):  
☐ I am licensed, registered, regulated, or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler.  
My license or registration number is: \_\_\_\_\_.  
☐ I am licensed, registered, regulated, or certificated under the Business and Professions Code as an automotive repair dealer.  
My license or registration number is: \_\_\_\_\_.  
☐ I am qualified as a scrap metal processor as described in the Vehicle Code.  
☐ I am not registered or licensed in California, but I am licensed, registered, regulated, certificated or otherwise authorized as a dealer, dismantler, automotive repairer or scrap metal processor in the following jurisdiction outside the state of California:  
State/Country \_\_\_\_\_ Registration/License Number \_\_\_\_\_
3. This certificate is for the purchase from \_\_\_\_\_ of the vehicle described below.  
vendor's name
4. I will resell the item(s) listed in paragraph 5, which I am purchasing in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased:  
\_\_\_\_\_  
\_\_\_\_\_
6. I have read and understand the following:  
A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date